



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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OCT 25 2012

RE: MUR 6427
Billy Long, Billy Long for Congress, Ron
Neville in his official capacity as treasurer,
and James Harris

Dear Mr. Thomas:

On November 15, 2010, the Federal Election Commission notified your clients of a complaint alleging violations of 2 U.S.C. § 441h(a). On July 19, 2011, the Commission found reason to believe that Unknown Respondents violated 2 U.S.C. § 441h(a) and commenced an investigation. On October 17, 2012, after completing its investigation, the Commission found that there is no reason to believe that your clients violated 2 U.S.C. § 441h(a). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact April Sands, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Billy Long MUR: 6427
Billy Long for Congress and
Ron Neville in his capacity as treasurer
James Harris

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I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by
Neil P. Reiff, Counsel to Scott Eskersley for Congress. See 2 U.S.C. § 437g(a)(1).

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II. BACKGROUND

This matter involves alleged fraudulent misrepresentation of campaign authority through
the distribution of fake e-mails and postings from social media accounts fraudulently created in
the name of congressional candidate Scott Eckersley. The perpetrator of the fraud, whose
identity was unknown at the time the Complaint was filed, sent a fictitious press release from a
fraudulent Yahoo! e-mail account stating, less than a week before the 2010 general election, that
Eckersley was suspending his campaign. The Complaint alleged that Eckersley's opponent,
Billy Long, and Long's political consultant James Harris were involved in the activity, in part
because Harris reacted positively to the false press release and re-circulated it via Twitter almost
as soon as it was first disseminated, and further because Long was a "follower" of the fake
Eckersley Twitter account.

The Commission found reason to believe that Unknown Respondents violated 2 U.S.C.
§ 441h(a), but took no action with respect to Long, Harris, and Long's authorized committee
Billy Long for Congress and Ron Neville in his official capacity as treasurer (the "Committee").
See Commission Certification (July 26, 2011). The Commission authorized an investigation to

1 determine the identity of the Unknown Respondents who created and communicated from the
2 fraudulent e-mail address and Twitter account and to determine whether the Unknown
3 Respondents were agents or employees of Long or any other federal candidate.

4 The investigation has revealed that Binning was solely responsible for creating the
5 Yahoo! and Twitter accounts and sending the fraudulent press release, and that he was not an
6 agent or employee of Long or any federal candidate. Accordingly, there is no violation of
7 2 U.S.C. § 441h, which applies to fraudulent misrepresentation by a federal candidate or his
8 employee or agent. Therefore, we recommend the Commission find no reason to believe Long,
9 Harris, or the Committee, violated the Federal Election Campaign Act of 1971, as amended
10 (the "Act").

11 **III. FACTS**

12 The alleged fraudulent press release e-mail was sent from the address
13 Scott.Eckersley@yahoo.com on October 29, 2010, and was labeled a "PRESS ADVISORY"
14 intended "FOR IMMEDIATE RELEASE." The release announced that "Eckersley Suspends
15 Campaign for Congress and Withdraws Until Further Notice . . . [d]ue to personal matters."
16 *See* Compl., Ex. A. The release further included a purported quote from Eckersley stating that he
17 was "saddened" about his "decision," and thanking his supporters. *Id.* Based on the fraudulent
18 press release, at least one television station reported incorrectly that Eckersley was suspending
19 his campaign. *See id.*, Ex. B. Further, the fraudulent Twitter account @SeckersleyMO7 was
20 used to send "tweets misrepresenting Eckersley's positions on the issues." *Id.*, Ex. E.

21 The Complaint outlined the possible relationship between Binning and the Committee.
22 *See id.*, Ex. E. According to the complainant, it appeared that Binning was connected to Long

1 because Binning went to a small private high school with Long's eldest daughter and posted a
2 message on Long's Facebook page offering assistance for the general election. *Id.* at 2.
3 In addition, Long's consultant Harris allegedly tweeted about the fake press release on Twitter at
4 around the same time the media began reporting about it, although he later attempted to delete
5 the post, from which the Complainant inferred that the Committee may have had advance notice
6 or was otherwise complicit. *Id.* at 1-2. Further, Long himself was apparently a "follower" of
7 both the fake Eckersley and the LF Strategies Twitter accounts, further evidencing a possible
8 connection between the perpetrator and the Committee, according to the Complaint. *See id.* at 2,
9 Ex. E.

10 The investigation determined that Respondent Binning created the fraudulent accounts.
11 He also acknowledged that he sent both the fake press release e-mail via Yahoo! and wrote the
12 tweets critical of Eckersley on the fake Eckersley Twitter account. Binning claimed that his
13 actions were conducted independently and were based on his personal interest in the Long
14 campaign. Binning claimed that he had no contact with the Committee and has never worked for
15 Long or the Committee in any capacity. The Committee's disclosure reports indicate that the
16 Committee did not make any payments to either Binning or his company, LakeFront.

17 Binning said that he had gone to school with both of Long's daughters and is acquainted
18 with Long. He claimed that he let his emotions get the better of him because of this relationship
19 with the Long family and felt compelled to send the false communications because he was angry
20 about Eckersley's campaign attacks on Long. Binning stated that the last time he had any
21 contact with Long was at a wedding on Memorial Day weekend in 2010.

1 The Committee, in its initial response to the Complaint, included affidavits from Long
2 and Harris in which they stated under oath that they “had no involvement with the distribution of
3 the Press Release to the media and had no knowledge of the Press Release prior to its distribution
4 to the media.” *See* Comm. Resp. (Dec. 2, 2010). In supplemental affidavits, Long, Harris,
5 Committee Treasurer Neville, and others connected to the campaign submitted sworn affidavits
6 stating that, to the best of their personal knowledge, Binning did not “serve as an employee or
7 agent of the Committee or have any involvement with or authority to act on behalf of
8 Billy Long’s campaign for Congress.”¹ Supp. Resp., Attach. 1-4 (Aug. 20, 2012).

9 **IV. LEGAL ANALYSIS**

10 The Act prohibits federal candidates and their employees or agents from fraudulently
11 misrepresenting themselves, or any organization under their control, “as speaking or writing or
12 otherwise acting for or on behalf of any other candidate or political party . . . on a matter which
13 is damaging to such other candidate or political party.” 2 U.S.C. § 441h(a)(1); *see also*
14 11 C.F.R. § 110.16(a)(1). Under 2 U.S.C. § 441h(a)(2), it is also unlawful to “willfully and
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¹ In addition to Billy Long, Ron Neville and James Harris, Respondents provided affidavits of Gordon Kinne and Jim Hutcheson. Kinne identifies himself as a “key advisor to Billy Long” and Hutcheson states that he has known Long “personally and professionally for a very long time” and that he “was involved from the beginning by participating in numerous conference calls and campaign meetings.” Both affiants state that, to the best of their knowledge, Patrick Binning did not “serve as an employee or agent of the Committee or have any involvement with or authority to act on behalf of Billy Long’s campaign for Congress.” *See* Supp. Resp., Attach. 1-4 (Aug. 20, 2012).

1 knowingly” participate in or conspire to participate in a plan or scheme to violate
2 subsection (a)(1). *See also* 11 C.F.R. § 110.16(a)(2).²

3 The investigation established that Binning sent the fake press release Yahoo! e-mail and
4 the tweets from the fake Twitter account. Those communications involved “a matter that is
5 damaging” to the Eckersley campaign because, among other things, at least one press
6 organization reported on the content of the release.

7 But a violation of Section 441h(a) is limited to fraudulent communications of *candidates*
8 *or their employees or agents*. 2 U.S.C. § 441h(a); 11 C.F.R. § 110.16(a)(1). There is no
9 evidence that Binning acted as an employee or agent of any candidate. Further, there is no
10 evidence that Long or the Committee had knowledge of Binning’s actions or communicated with
11 him in any way such that one could conclude there was a conspiracy to violate section 441h(a),
12 and the relevant members of Long and the Committee’s staff with personal knowledge have
13 provided sworn affidavits asserting the contrary. Therefore, the Commission finds no reason to
14 believe that Long, Harris, or the Committee violated the Act.

² Section 441h(a) encompasses, for example, a candidate who distributes letters containing statements damaging to an opponent and who fraudulently attributes them to the opponent. *Explanation and Justification for Final Rules on Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds*, 67 Fed. Reg. 76,962, 76,968 (Dec. 13, 2002). The Commission has determined that “a matter that is damaging” includes actions or spoken or written communications that are intended to suppress votes for the candidate or party who has been fraudulently misrepresented. *Id.* at 76,968-69. A violation of 2 U.S.C. § 441h(a) does not depend on whether the candidate or party who is fraudulently represented is elected and does not require proof of justifiable reliance or damages. *Id.* at 76,969.